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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,563	01/03/2002	Robert J. Ripich	1276-N	7118
45069	7590	05/18/2005	EXAMINER	
FRED ZOLLINGER III P.O. BOX 2368 NORTH CANTON, OH 44720			BAXTER, JESSICA R	
		ART UNIT	PAPER NUMBER	
		3731		
DATE MAILED: 05/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/038,563	RIPICH ET AL.	
	Examiner	Art Unit	
	Jessica R Baxter	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 February 2005.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 17-20 and 22-31 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 17-19, 22-25, 27-29 and 31 is/are rejected.  
 7) Claim(s) 20, 26 and 30 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 17-19, 23-25 and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,916,228 to Ripich et al.

Ripich discloses a tongue cleaning device comprising a body having a handle (21) and a head; the head having scraping wall defining a working edge (31,41)e adapted to be moved over the tongue; the scraping wall having a front surface facing in the direction of the handle body; the head of the body defining a debris retention recess ( space between edges 31 and 41) adjacent the working edge adapted to collect debris as it is removed from the tongue by the working edge; wherein the debris retention recess is a curved depression defined in the front surface of the scraping wall.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ripich et al. '228 in view of U.S. Patent No. 5,624,259 to Heath et al.

Ripich discloses the claimed invention except for the body being fabricated from titanium. Ripich teaches that the device is may be made out of metal. Heath teaches that titanium is used in dental tools since it provides a high degree of flexibility and wear resistance and thus function properly for extended periods of time (Column 3 line 37-Column 4 line 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device of Ripich out of a titanium in order to provide the device with superior wear resistance and higher flexibility.

#### *Allowable Subject Matter*

5. Claims 20, 26 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

6. Applicant's arguments filed February 22, 2005 have been fully considered but they are not persuasive.

Applicant argues that Ripich et al. '228 does not disclose a debris-retention recess. Although Ripich does not disclose that the gap is specifically for retaining debris, the space may retain debris. As the scraper is moved over the tongue, the front surfaces on the scraping walls will retain the debris that is removed from the tongue. There is no structural difference between what is claimed and what is disclosed by Ripich et al. '228. Therefore, the rejection over Ripich et al. '228 is proper.

Applicant argues that the recess disclosed by Ripich et al. '228 is not defined by a a single scraping wall. However, claim 28 does not call for one and only one scraping wall. Therefore, the rejection over Ripich et al. '228 is proper.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

  
jrb

  
ANHTUAN T. NGUYEN  
SUPERVISORY PATENT EXAMINER

  
5/16/05